

# CLARK HILL

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April 29, 2016

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
VIA FACSIMILE: (202) 219-3923

OFFICE OF GENERAL  
COUNSEL

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RECEIVED  
FEDERAL ELECTION  
COMMISSION

Re: MUR 7018 -- Response to Complaint from Reform Washington and Rick Wilson.

Dear Mr. Jordan:

We are writing this letter on behalf of our clients, Reform Washington, and Nancy H. Watkins in her official capacity as Treasurer, and Rick Wilson, in response to the Complaint filed by the American Democracy Legal Fund ("Complainant") alleging Respondents violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and Federal Election Commission ("Commission") regulations by coordinating with the Carlos Lopez-Castnera for Senate Committee. Specifically, the Complaint alleges that Reform Washington and the CLC Campaign "are engaging in, or will imminently be engaging in, illegal coordination through the use of a common vendor, Rick Wilson and/or Intrepid Media, Inc.," or in the alternative, by "sharing a former employee."

The Complainant in this matter is a Democrat organization that exists solely to file politically motivated, frivolous complaints primarily against Republican candidates and committees, but also against anyone who dares oppose Hillary Clinton.<sup>2</sup> The Complainant provides no evidence -- no communications, personal knowledge, or even hearsay -- to support the allegations made in the Complaint. As such, we respectfully request that the Complaint in this matter be immediately dismissed.

<sup>1</sup> Compl. at 3.

<sup>2</sup> See "Hillary Clinton Ally Hits Bernie Sanders with FEC Complaints," USA Today, Mar. 30, 2016 at <http://www.usatoday.com/story/news/politics/elections/2016/03/30/hillary-clinton-ally-hits-bernie-sanders-fec-complaints/83626790/>.

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I. Background

Reform Washington is registered as an Independent Expenditure-Only Committee with the Commission. Rick Wilson is an independent contractor who was retained by Reform Washington through his company, Intrepid Media, Inc., to provide consulting services beginning December 1, 2015. Prior to December 1, 2015, Wilson/Intrepid Media also served as an independent contractor to the Carlos Lopez-Cantera for Senate Committee ("CLC Campaign"), the authorized campaign committee of Carlos Lopez-Cantera. Upon leaving the CLC Campaign and joining Reform Washington, Wilson was provided detailed guidance regarding the requirement that he abide by a 120-day "cooling off" period whereby he would be prohibited from "discussing or conveying material information about the CLC Campaign's plans, projects, activities or needs to any employee, agent or vendor of Reform Washington."<sup>3</sup> Wilson affirmatively acknowledged and agreed to abide by the "cooling off" period required by the Commission and implemented by Reform Washington.

II. Legal Analysis

Under Commission regulations, a public communication is deemed coordinated and constitutes an in-kind contribution if the following three-prong test is satisfied: (1) the communication is paid for by someone other than a candidate, the candidate's authorized committee, or an agent of either; (2) the communication satisfies at least one of the content standards set forth at 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct standards set forth at 11 C.F.R. § 109.21(d).

The Complaint alleges Reform Washington and the CLC Campaign have satisfied the "conduct standard" by the use of a common vendor or a former employee/independent contractor.<sup>4</sup> The Complaint, however, completely skips the first prong – the payment prong. To satisfy the coordination regulation there must be a communication paid for by someone other than the candidate, the candidate's authorized committee, or an agent of either. Reform Washington has not paid for any public communications. Therefore, the Commission need not proceed any further with its analysis, and the Complaint should be immediately dismissed.

Nonetheless, even if Reform Washington had paid for a public communication, the Complainant has provided no evidence that such a communication would have been coordinated by virtue of a common vendor or former independent contractor or employee. The conduct prong is met if:

- The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the

<sup>3</sup> See attached memorandum re "FEC Coordination Rules on Former Employee of Campaign" and "Reform Washington Super PAC Firewall Agreement."

<sup>4</sup> Intrepid Media did not serve as a common vendor to Reform Washington or the CLC Campaign as the relationship with the CLC Campaign was terminated prior to contracting with Reform Washington. As such, the common vendor rules are not implicated.

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opponent's authorized committee or a political party committee, during the previous 120 days, and... [t]hat former employee or independent contractor uses or conveys to the person paying for the communication:

- Information about campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or
- Information used by the former employee or independent contractor in providing services to the candidate clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.
- The conduct prong is not satisfied if the information that is material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source.

Despite the Complainant's misleading statement of the law,<sup>5</sup> the mere existence of a "former employee or independent contractor" during the 120 day time period does not, by itself, constitute evidence of coordination. In fact, the Commission has clearly stated "that the temporal limit in the common vendor and former employee standard was not intended to serve as a 'cooling off' period where employment was forbidden."<sup>7</sup> The conduct prong requires more – (1) that the outside group pay for a communication, and (2) that the former employee/independent contractor actually use or convey information about the campaign that is material to the creation, production, or distribution of that communication.

Wilson's 120 day "cooling off" period ended on March 29, 2016. As stated above, Reform Washington did not pay for the creation, production, or distribution of any public communications during the 120 day time period, and in fact, has not made any payments for that purpose to date. Even if Reform Washington had created, produced, and distributed a communication during that time period, Complainant provided no evidence that Wilson violated the "cooling off" policy implemented by Reform Washington by conveying material information about the CLC Campaign's plans, projects, activities, or needs. As such, Complainant has failed to demonstrate that Respondents violated the Act or Commission regulations.

<sup>5</sup> Pursuant to Commission regulations, the 120 day period begins on the last day an independent contractor or employee is employed by the campaign or the last day a commercial vendor performed certain covered services for the campaign. See Coordinated Communication, Explanation and Justification, 71 Fed. Reg. 33190, 33204 (Jun. 8, 2006).

<sup>6</sup> See Compl. at 5-6. Complainant partially quotes 11 C.F.R. § 109.21(d)(5)(i) but leaves out the critical conjunction "and" at the end of subsection (i), which links to the remainder of the regulation (subsection (ii)(A)-(B)) describing the actual "conduct" the former employee/independent contractor must engage in to satisfy the "conduct" standard.

<sup>7</sup> See Coordinated Communications, Explanation and Justification, 71 Fed. Reg. 33190, 33204 (Jun. 8, 2006).

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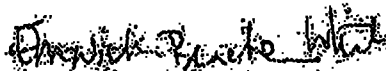
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III. Conclusion

This was a frivolous, politically-motivated complaint, and Complainant has failed to demonstrate that Reform Washington and Rick Wilson have violated any provision of the Act or the Commission's regulations. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your prompt consideration of these matters, and please do not hesitate to contact me directly at (202) 572-8669 with any questions.

CLARK HILL PLC



Elizabeth Beacham White

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## REFORM WASHINGTON SUPER PAC FIREWALL AGREEMENT 2016 Florida US Senate Independent Expenditures

Reform Washington will be engaged in independent expenditures in connection with the Florida 2016 Senate election in support of Republican candidate Carlos Lopez-Cantaflo ("CLC"). Reform Washington has the right to engage in these activities under the First Amendment as long as they are conducted independently of federal candidates and political party committees. It is critical that Reform Washington does not coordinate its activities or discuss the political and communications plans, projects, activities or needs of the CLC campaign with any individuals working or consulting for the campaign.

In order to ensure that individuals involved in the planning or production of Reform Washington's independent expenditures do not engage in any coordination with the CLC campaign, Reform Washington has instituted a FL-SENATE Firewall Policy. This memorandum explains Reform Washington's FL-SENATE Firewall Policy ("Firewall Policy"), which is binding on all individuals who may be involved in the planning, strategizing, production or creation of Reform Washington's FL-SENATE independent expenditures.

### Firewall Policy

The Reform Washington FL-SENATE Firewall Policy is designed to prevent the flow of private information about the CLC campaign's plans, projects, needs or activities from agents or consultants of the campaign to Reform Washington and its agents or consultants. Specifically, the Firewall Policy will prevent a request or suggestion or the use or conveyance of material, private information about the CLC campaign that may be used in connection with any Reform Washington independent expenditure advertisement. Accordingly, this Firewall Policy is designed to ensure that Reform Washington's independent expenditure activities comply with the federal campaign finance laws and regulations. The following policies are hereby instituted:

- All individuals involved in the planning, strategizing, production or creation of Reform Washington's independent expenditures targeting the FL-SENATE election are prohibited from discussing any private political, communications, projects, or activities of Reform Washington's independent expenditure program with the CLC campaign, or its agents and consultants.
- No individual involved in the planning, strategizing, production or creation of Reform Washington's independent expenditures in FL-SENATE may have a discussion with any agent or a political party committee about the political party committee's private political and communications plans, projects, activities or needs relating to FL-SENATE.
- No individual involved in the planning, strategizing, production or creation of Reform Washington's independent expenditures may have a discussion with CLC, the CLC campaign, and any campaign agents and consultants, about the CLC campaign's private political and communications plans, projects, activities or needs.

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- At no time may individuals involved in the planning, strategizing, production or creation of Reform Washington's independent expenditures in FL-SENATE have discussions with CLC, the CLC campaign, or any agents or consultants, regarding the content, timing, or method of communication of its independent expenditures or the campaign's public communications, nor may individuals involved in the planning, strategizing, production or creation of Reform Washington's independent expenditures in FL-SENATE have discussions with a party committee, any of its agents or consultants with respect to public communications that target FL-SENATE.

#### Reform Washington Independent Expenditure Vendors

Reform Washington will retain vendors specializing in a variety of fields who will develop the content, timing, method of communication (e.g., phone bank vs. direct mail), and frequency of Reform Washington's independent expenditure advertisements. Each Reform Washington vendor will be pre-screened to ensure that it is not a common vendor with the CLC campaign or of any political party committee ("Conflicted Parties"). Reform Washington will retain additional vendors if an existing vendor has any conflicts in FL-SENATE.

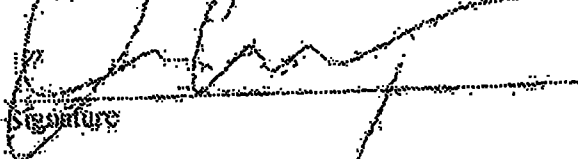
However, a vendor may establish an internal firewall policy designed to prevent the vendor's employees providing services to Reform Washington from also providing services to the Conflicted Parties. The vendor's internal firewall policy must be approved in writing by Reform Washington, and comprehensively designed to prevent the organizations and employees providing services to Reform Washington from disseminating Reform Washington's independent expenditure program with, or receiving material information from, the vendor or other employees providing services to any Conflicted Parties. Any Reform Washington independent expenditure vendor that has established an internal firewall policy must provide Reform Washington with a written copy of such policy to ensure compliance with the Reform Washington FL-SENATE Firewall Policy and all applicable laws.

If a vendor's structure and personnel preclude it from establishing such an internal firewall, the vendor is barred from serving as a common vendor with any Conflicted Parties.

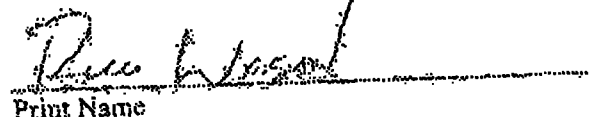
#### Acknowledgement

I have read the REFORM WASHINGTON Internal Firewall Policy and agree to abide by its

Certified:



Signature



Print Name

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## BEFORE THE FEDERAL ELECTION COMMISSION STATEMENT OF DESIGNATION OF COUNSEL

MUR # 7018

Name of Counsel: Elizabeth Beacham White  
Clark Hill PLC  
601 Pennsylvania Avenue, NW  
North Building, Suite 1000  
Washington, DC 20004

Telephone: (202) 572-8669  
Fax: (202) 572-8689

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/29/2016  
Date

  
Respondent/Client Signature

CLC Infrared Media

Respondent/Client: Rick Wilson

Tallahassee, FL 32312

Telephone - Business: 202-572-8669

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.